



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases access to public records.

#### B. EFFECT OF PROPOSED CHANGES:

##### **BACKGROUND**

##### Public Records Law

Article I, s. 24(a) of the Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.<sup>1</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or
- Protecting trade or business secrets.

##### Public Record Exemptions for Agency Personnel

Current law provides several public record exemptions for identification and location information regarding certain agency personnel and their spouses and children.<sup>3</sup> The exemptions, however, do not apply to emergency medical technicians or paramedics.

Current law also provides a public record exemption for the social security numbers of agency personnel.<sup>4</sup>

##### **EFFECT OF BILL**

The bill expands the current public record exemption for identification and location information of certain agency personnel to include active or former emergency medical technicians (EMTs) or paramedics certified in compliance with chapter 401, F.S. The following information is exempt from public records requirements:

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<sup>1</sup> Article I, s. 24(c) of the Florida Constitution.

<sup>2</sup> Section 119.15, F.S.

<sup>3</sup> Examples of such personnel include police officers, firefighters, and certain judges. *See* s. 119.071(4)(d), F.S.

<sup>4</sup> Section 119.071(4)(a), F.S.

- The home addresses, telephone numbers, social security numbers, and photographs of active or former EMTs or paramedics;
- The names, home addresses, telephone numbers, social security numbers, photographs, and places of employment of their spouses and children; and
- The names and locations of schools and day care facilities attended by their children.

An agency, other than the employing agency, who is the custodian of such information, must maintain the exempt status of that information only if the EMT or paramedic or his or her employer, submits a written request to the custodial agency.

The bill provides for future review and repeal of the exemption on October 2, 2013, pursuant to the Open Government Sunset Review Act. It also provides a public necessity statement as required by the Florida Constitution.

C. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., to create a public record exemption for identification and location information regarding EMTs and paramedics.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of July 1, 2008.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill likely could create a minimal fiscal impact on employers of EMTs and paramedics and those agencies maintaining protected identification and location information of those employees, because staff responsible for complying with public records requests could require training related to the expansion of the current public record exemption. In addition, the agencies could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agencies.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The mandates provision does not appear to apply because this bill is not expected to require counties and municipalities to spend funds or to take an action requiring the expenditure of funds, reduce the percentage of a state tax shared with counties or municipalities, or reduce the authority that municipalities have to raise revenue.

##### 2. Other:

###### Vote Requirement

Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it requires a two-thirds vote for passage.

###### Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it includes a public necessity statement.

###### Overly Broad

Article I, s. 24(c) of the Florida Constitution, requires that an exemption be drafted as narrowly as possible. This exemption could raise constitutional concerns, because the exemption could be considered overly broad in that it is unclear if the employing agency collects the photographs of the spouse and children of EMTs and paramedics. In addition, this bill creates a public record exemption for photographs of active or former EMTs and paramedics, yet the photos of those EMTs and paramedics are located on their ID badges.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

##### Other Comments: Duplicative Exemptions for Social Security Numbers

It is unclear why an additional public record exemption is required to protect the social security numbers of EMTs and paramedics. Current law already provides a public record exemption for the social security numbers of EMTs and paramedics.<sup>5</sup> It provides that the social security number is exempt from public records requirements. Further, it allows the EMT or paramedic to request protection of the number by an agency other than the employing agency.<sup>6</sup> As such, this exemption appears duplicative of current law.

Current law also provides a general public record exemption for social security numbers that presently protects the social security numbers of the spouse and children of EMTs and paramedics.<sup>7</sup> The general exemption for social security numbers provides that those numbers are confidential and

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<sup>5</sup> Section 119.071(4)(a)1., F.S.

<sup>6</sup> Section 119.071(4)(a)2., F.S.

<sup>7</sup> Section 119.071(5)(a), F.S.

exempt from public records requirements, whereas this bill makes those numbers exempt only.<sup>8</sup> In addition, it is unclear why the general exemption for social security numbers is not sufficient, because the public necessity statement does not address this issue nor does it address the need for an additional public record exemption.

#### Drafting Issues

Line 148 of the bill makes the identification and location information exempt from subsection (1) of s. 119.071, F.S. The reference is incorrect and should be changed to make the information exempt from s. 119.07(1), F.S.

Line 177 of the bill references the need to make the identification and location information confidential, however, the bill makes such information exempt only. There is a difference between records that are exempt from public records requirements and those that are confidential and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute.<sup>9</sup> If a record is made simply exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.<sup>10</sup> As such, the public necessity statement should be amended to comport with the exemption.

#### D. STATEMENT OF THE SPONSOR

This bill merely fixes a glitch to treat law enforcement officers, fire fighters and paramedics the same as it relates to public records. Clearly all are first responders and clearly all are in contact with the same individuals when called to a scene. Why then should paramedics be treated in a manner that is not consistent with other first responders? I believe they should not and I ask for your support.

#### **IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

Not applicable.

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<sup>8</sup> There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. See Attorney General Opinion 85-62. If a record is made simply exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

<sup>9</sup> See Attorney General Opinion 85-62.

<sup>10</sup> See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).